



## JUDICIAL ADVISORY BOARD MINUTES

February 4, 2009

The Judicial Advisory Board of the City of Mesa met in the lower level meeting room of the Council Chambers, 57 East 1st Street, on February 4, 2009 at 7:47 a.m.

### COMMITTEE PRESENT

David M. Talamante, Chairman  
Kate Ali'varius  
Daniel A. Barker  
Michael B. Cowan  
Scott Rhodes

### COMMITTEE ABSENT

Marlon E. Branham  
Stella Hunsaker

### STAFF PRESENT

Susan Bozile  
Kathleen Broman  
Michael Claspell  
Victor Ortiz  
Matt Tafoya  
Paul Thomas

#### 1. Introduce New Boardmember.

Boardmember Daniel Barker provided a short synopsis of his professional background.

Chairman Talamante welcomed Boardmember Barker to the Judicial Advisory Board.

#### 2. Approve minutes from the October 1, 2008 Board meeting.

It was moved by Boardmember Rhodes, seconded by Boardmember Ali'varius, that the minutes of the October 1, 2008 Judicial Advisory Board meeting be approved.

Chairman Talamante declared the motion carried unanimously by those present.

#### 3. Items from citizens present.

There were no items from citizens present.

#### 4. Hear an update on the Open Meeting Law from City Attorney Debbie Spinner.

City Attorney Debbie Spinner addressed the Board and provided an extensive overview of the Open Meeting Law (OML) and its impact on the Judicial Advisory Board. She stated that the Boardmembers were provided copies of a document entitled "Open Meeting Law Primer," which

was written and prepared by the Arizona Attorney General's Office. (The document is available for review in the City Clerk's Office.) Ms. Spinner explained that the purpose of the OML, which is enforced by the Attorney General's Office, is to ensure that citizens are permitted to attend and listen to the deliberations and proceedings of all meetings held by any public body.

Ms. Spinner reported that the Judicial Advisory Board is subject to the OML and required to follow the same rules and regulations as the Mesa City Council. She stated that because the Boardmembers make recommendations to the City Council, it is important that the public have the opportunity to observe their "thought processes" when such decisions are rendered. Ms. Spinner added that if a Board subcommittee were formed, the OML would also apply to that group.

Ms. Spinner cited the legal definition of "a meeting" as follows: "A gathering, in person or through technological devices (i.e., telephone and e-mail communications) of a quorum of a public body at which they discuss, propose or take legal action, including deliberations."

Ms. Spinner further remarked that with regard to the seven-member Judicial Advisory Board, four members constitute a quorum. She cautioned that a quorum of the Board "just talking" outside of a legally posted and agendized meeting could result in the individuals unintentionally violating the OML. Ms. Spinner stated that for that reason, she would encourage the Boardmembers to refrain from expressing their concerns and debating specific issues until the time and date of the legally posted meeting.

Discussion ensued relative to the fact that the OML requires that at least 24 hours in advance of a public meeting, the meeting notice must be posted and the agendas/backup materials available; that the public body may only discuss items listed on the agenda or "reasonably related" to the agenda; that the meeting notice and agenda must indicate that the public body may adjourn into Executive Session and cite the specific statutory basis for doing so; and that the public body must vote to go into Executive Session.

Chairman Talamante commented that last fall when the Judicial Advisory Board made its recommendations regarding the reappointment of City magistrates, two of the Boardmembers were asked to attend an Executive Session of the City Council to discuss those reappointments. He inquired if such attendance would implicate the Board's duties and obligations under the OML.

Ms. Spinner responded that in her opinion, the Board would not have violated the OML for the reasons that only two members attended the City Council's Executive Session and it was not necessary that a hearing notice be posted for the Board. She explained that the two Boardmembers were legally permitted to attend the Executive Session and "considered necessary" so that the City Council could accomplish their responsibilities with regard to the reappointment of City magistrates.

Boardmember Rhodes advised that he and Chairman Talamante were the two Boardmembers who attended the City Council's Executive Session and noted they were concerned whether it would be appropriate for them to share confidential information with the City Council that the Board had discussed in Executive Session. He stated that he and Chairman Talamante elected to discuss only those issues contained in the public records and discussed during the Board's public meeting.

Ms. Spinner indicated that because Chairman Talamante and Boardmember Rhodes were invited to attend the City Council's Executive Session and provide information/recommendations relative to the reappointment of City magistrates, in her opinion it would have been permissible for them to disclose confidential information discussed during the Board's Executive Session. She also noted that the City Council would have been legally obligated to maintain the information that was conveyed as confidential.

Boardmember Rhodes further remarked that during their attendance at the City Council's Executive Session, he and Chairman Talamante were of the opinion that they were two individuals meeting with the City Council and not speaking for their fellow Boardmembers. He said that they mainly declined to provide individual opinions since such opinions would have been irrelevant as compared to the opinions of the Boardmembers.

Ms. Spinner acknowledged Boardmember Rhodes' concerns and suggested that if a Boardmember attended a City Council Executive Session or represented the Board in some other capacity, it would be appropriate for that individual to indicate whether he or she were speaking as an individual or on behalf of the Board.

Chairman Talamante also noted that if he were asked to attend a City Council Executive Session in the future, he might consider it to be inappropriate because the remaining Boardmembers would have no idea what transpired during the meeting other than the assurances of the attending Boardmembers that they did not misrepresent the Board's position.

Boardmember Rhodes concurred with Chairman Talamante's comments and suggested that if a similar situation occurs in the future, that the entire Board be invited to attend the City Council's Executive Session or, in the alternative, that a joint meeting of the two public bodies be held.

Ms. Spinner confirmed that such an option would be available.

In response to a question from Boardmember Ali'varius, Ms. Spinner clarified that in an Executive Session, the Boardmembers can discuss or reach consensus on an issue (i.e., selecting interview questions to pose to the reappointment candidates during the public hearing), cannot take final action on a matter, and must return to the public session for a vote.

Ms. Spinner continued with her presentation and offered the following comments as related to e-mail communications between Boardmembers and their impact on the OML:

- E-mail communications are treated the same as any other form of communication between Boardmembers.
- E-mails exchanged among a quorum of the Board that involve discussions, deliberations or taking legal action on matters that may come before the Board constitute a "meeting" and violate the OML.
- A unilateral e-mail from one Boardmember to a quorum of the other Boardmembers that provides information and an opinion would not violate the OML provided the member does not "propose legal action" and the other Boardmembers do not respond to the e-mail.
- E-mails from third parties to a quorum of the Board would not violate the OML provided that the Boardmembers do not "reply all" if responding back to the third party.

Ms. Spinner stated that in order to avoid any problems with regard to e-mail communications, she would recommend that the Boardmembers communicate with either staff or Chairman Talamante when they require additional research/information on an item or when they would like to include an item on the agenda.

Ms. Spinner responded to additional questions from various Boardmembers relative to the confidential nature of information discussed in an Executive Session; the process undertaken by the Board to “vet” City magistrate candidates; and the circumstances under which it would be appropriate for the Board to invite a candidate to attend an Executive Session to respond to questions of a confidential nature (i.e., credit report findings) that should not be discussed in a public meeting.

Chairman Talamante thanked Ms. Spinner for her comprehensive presentation.

5. Review, discuss and take action on items related to the reappointment of Magistrate Karl Eppich and Magistrate Victor Ortiz, whose terms expire June 30, 2009:

- a. Review Applications for Reappointment and assign reference checks
- b. Response from the Commission on Judicial Conduct
- c. Survey results
- d. Court data

Chairman Talamante briefly reviewed the above-referenced materials distributed to the Board with regard to Magistrates Karl Eppich and Victor Ortiz.

Boardmembers Rhodes and Cowan volunteered to conduct the reference checks of Magistrates Ortiz and Eppich respectively. Boardmember Rhodes also stated that he and Boardmember Cowan conducting reference checks should not preclude the other Boardmembers from performing their own due diligence with regard to the appointment/reappointment process.

6. Convene an Executive Session.

- a. Discussion or consideration of employment, assignment, appointment, promotion or resignation of a public officer, appointee or employee of the City. (A.R.S. 38-431.03A(1))
  1. Reappointment of Magistrates – Interview questions

It was moved by Boardmember Cowan, seconded by Boardmember Ali'varius, that an Executive Session be convened at 8:42 a.m.

Chairman Talamante declared the motion carried unanimously by those present.

(At 9:43 a.m., the Executive Session adjourned and the Board reconvened their regular meeting.)

7. Scheduling of meetings and general information.

Chairman Talamante stated that the next meeting of the Judicial Advisory Board would be held on March 4, 2009, at 5:30 p.m., at which time the Board would meet in Executive Session to

finalize the interview questions. He also noted that the Public Hearing/Interview of Magistrate Victor Ortiz is scheduled to begin at 5:45 p.m. in the Lower Level Council Chambers, 57 East 1<sup>st</sup> Street, followed by the Public Hearing/Interview of Magistrate Karl Eppich at 6:15 p.m.

8. Adjournment.

It was moved by Boardmember Rhodes, seconded by Boardmember Barker, that the meeting of the Judicial Advisory Board be adjourned at 9:47 a.m.

Chairman Talamante declared the motion carried unanimously by those present.

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Judicial Advisory Board meeting of the City of Mesa, Arizona, held on the 4<sup>th</sup> day of February 2009. I further certify that the meeting was duly called and held and that a quorum was present.

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LINDA CROCKER, CITY CLERK

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